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September 15, 2003

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554
ATTN: Chief, Consumer & Governmental Affairs Bureau

Re: *Telecommunications Relay Services and Speech-to-Speech Services for
Individuals with Hearing and Speech Disabilities (CC Docket No. 98-67)*
PETITION FOR WAIVER EXTENSION

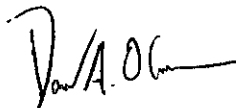
Dear Ms. Dortch:

Transmitted herewith, on behalf of Hamilton Relay, Inc. ("Hamilton"), are an original and four (4) copies of Hamilton's Petition for Waiver Extension.

An extra copy of the filing is enclosed. Please date-stamp the extra copy and return it to the courier.

Respectfully submitted,

HOLLAND & KNIGHT LLP



David A. O'Connor
Counsel for Hamilton Relay, Inc.

Enclosure

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Telecommunications Relay Services
and Speech-to-Speech Services for
Individuals with Hearing and Speech
Disabilities

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CC Docket No. 98-67

RECEIVED

To: Chief, Consumer and Governmental Affairs Bureau

SEP 15 2003

PETITION FOR WAIVER EXTENSION

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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September 15, 2003

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SUMMARY

By this Petition, Hamilton Relay, Inc. (“Hamilton”) is seeking an extension of various waivers issued to providers of video relay services (“VRS”) in December 2001. The waivers are scheduled to expire in December 2003, and good cause is shown for an extension of those waivers.

VRS continues to be a voluntary telecommunications relay service (“TRS”), and, much like Internet Protocol (“IP”) Relay service, VRS has several technological limitations owing to its reliance on the Internet. Accordingly, for the reasons set forth in detail in the Petition, Hamilton requests that the Commission waive, until January 1, 2008, the following requirements: 1) emergency call handling; 2) speed of answer; 3) pay-per-call (900 number) services; 4) automatic call forwarding; and 5) voice-initiated calls, including voice carryover (“VCO”) and hearing carryover (“HCO”). Hamilton also requests that the Commission permanently waive the interexchange equal access requirement for VRS providers because it is unnecessary. Finally, Hamilton requests that the Commission clarify that VRS providers are not required to provide speech-to-speech (“STS”) or Spanish relay services until further notice from the Commission.

In order to ensure that VRS waiver extensions serve the public interest, Hamilton proposes that the Commission require VRS providers to submit an annual report detailing any technological changes, progress made and steps taken to resolve technological problems. For administrative convenience, Hamilton suggests that such reports be incorporated into the VRS/IP Relay report due annually on April 16.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Relay Services)	CC Docket No. 98-67
and Speech-to-Speech Services for)	
Individuals with Hearing and Speech)	
Disabilities)	

To: Chief, Consumer and Governmental Affairs Bureau

PETITION FOR WAIVER EXTENSION

Hamilton Relay Services, Inc. ("Hamilton"), by its attorneys and pursuant to section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, hereby respectfully requests an extension of the waiver of certain mandatory minimum requirements for providing Video Relay Services ("VRS"). The waiver is scheduled to expire on December 21, 2003 pursuant to the terms of the Bureau's *VRS Waiver Order*.¹ For the reasons set forth below, Hamilton submits that the circumstances justifying the original waiver continue to exist today and merit an extension of the waiver. Because the Commission has recently granted VRS providers a waiver of various other requirements until January 1, 2008, and for purposes of administrative convenience, Hamilton suggests that those waivers that are not permanently granted should be extended until January 1, 2008 so that all VRS and Internet Protocol ("IP") Relay waivers will expire at the same time.

In addition, in order to ensure that a waiver extension will continue to serve the public interest, Hamilton suggests that the waiver extensions be contingent on

¹ *Telecommunications Relay Services And Speech-To-Speech Services For Individuals With Hearing And Speech Disabilities*, Order, DA 01-3029, 17 FCC Rcd 157 (Comm. Carr. Bur., rel. Dec. 21, 2001) ("*VRS Waiver Order*").

VRS providers filing an annual report with the Commission detailing any technological changes, progress made, and steps taken to resolve the technological problems that prevent VRS providers from offering the minimum requirements that have been waived.

I. Introduction

In a decision released March 6, 2000, the Commission determined that the use of a video link to allow a communications assistant (“CA”) to “view and interpret the caller’s sign language and relay the conversation to a voice caller” is a Telecommunications Relay Service (“TRS”) under section 225 of the Communications Act,² for which cost recovery should be available.³ The Commission determined that VRS is “in its technological infancy” and encouraged TRS providers to offer VRS on a voluntary basis.⁴ As a method of encouraging VRS development, the Commission decided to permit “the costs of all calls – both intrastate and interstate – to be reimbursed from the interstate TRS Fund,” and to monitor the development of the service.⁵

In December 2001, in response to petitions filed by Hamilton and Sprint, the Bureau granted a two-year waiver of various minimum requirements⁶ relating to the provision of VRS. Specifically, the Bureau waived the requirements to:

² 47 U.S.C. § 225.

³ *Telecommunications Relay Services And Speech-To-Speech Services For Individuals With Hearing And Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, FCC 00-56, 15 FCC Rcd 5140, para. 22 (2000) (“2000 TRS Order”). Very early on, the Bureau referred to VRS as video relay interpreting (“VRI”). More recently, TRS providers have alerted the Bureau to the major differences between VRS and VRI, see, e.g., Comments of Hamilton Relay, Inc. (filed Aug. 26, 2003).

⁴ 2000 TRS Order para. 22.

⁵ *Id.* paras. 9, 21.

⁶ 47 C.F.R. § 64.603, 64.604.

1) Provide TRS users access to their chosen interexchange carrier through TRS, and to all other operator services, to the same extent that such access is provided to voice users (“equal access to interexchange carriers”),⁷ to provide operator assisted calls and to bill certain types of long distance calls to the end user (“types of calls”);⁸

2) Provide a system for incoming emergency calls that automatically and immediately transfers the caller to the nearest public safety answering point (“emergency call handling”);⁹

3) Answer 85 percent of relay calls within 10 seconds by any method which results in the caller’s call being placed, not put in queue or on hold (“speed of answer”);¹⁰ and

4) Provide pay-per-call services (or 900 number calls).¹¹

Also in December 2001, the Commission, by separate order, clarified that VRS providers are not required at this time to include video-based speech-to-speech (“STS”), Spanish relay and other text-to-speech related mandatory minimum standards.¹² The Commission stated that as VRS and Spanish relay services develop, the decision to waive these requirements may be revisited.¹³

Finally, in June 2003, the Commission waived the requirement that VRS providers and Internet Protocol (“IP”) Relay providers provide two-line voice carry

⁷ *VRS Waiver Order* paras. 17-18.

⁸ *Id.* paras. 9-10.

⁹ *VRS Waiver Order* paras. 11-14. As discussed below, the Commission has recently changed the emergency call handling rule. Effective September 24, 2003, emergency calls made through TRS must be routed to an *appropriate* PSAP as opposed to the nearest PSAP. See 68 Fed. Reg. 50,973 (rel. Aug. 25, 2003).

¹⁰ *Id.* paras. 15-16.

¹¹ *Id.* paras. 19-20.

¹² *Telecommunications Services for Individuals with Hearing and Speech Disabilities; Recommended Cost Recovery Guidelines; Request by Hamilton Telephone Company for Clarification and Temporary Waivers*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 01-371, 16 FCC Rcd 22,948, paras. 26-27 (rel. Dec. 21, 2001) (“*STS/VRS Waiver*”); see also *Telecommunications Relay Services And Speech-To-Speech Services For Individuals With Hearing And Speech Disabilities*, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, CC Docket No. 98-67, CG Docket No. 03-123, FCC 03-112, para. 35 (rel. June 13, 2003) (“*2003 TRS Order*”).

¹³ *STS/VRS Waiver Order* paras. 26-27.

over (“VCO”), two-line hearing carry over (“HCO”), VCO-to-text-telephone (“TTY”), HCO-to-TTY, VCO-to-VCO, and HCO-to-HCO. Consistent with various waivers previously granted to IP Relay providers, the Commission granted these waivers until January 1, 2008, contingent on IP Relay providers and VRS providers filing an annual report.¹⁴

II. An Extension of the VRS Waivers Is Warranted

As Hamilton demonstrates below, an extension of the existing waivers would serve the public and the Commission’s goals well. VRS continues to be an important but voluntary service, and the Commission should continue to encourage its nascent development. One method of doing so is to ensure that VRS providers are justly compensated for their services. That issue is being addressed in a separate proceeding.¹⁵

The other method of spurring development and encouraging new VRS providers to enter the market is to extend the waivers granted in the *VRS Waiver Order*. These waivers continue to be necessary because the technological and market limitations that justified the original waivers still exist today. Specifically, the Commission should extend waivers of the following requirements:

A. Emergency Call Handling

Effective September 24, 2003, Section 64.604(a)(4) will require TRS providers to automatically and immediately transfer emergency calls to an appropriate Public

¹⁴ 2003 TRS Order para. 36.

¹⁵ See *Petitions for Reconsideration Regarding the Video Relay Service (VRS) Interim Per-Minute Compensation Rate*, Public Notice, CC Docket No. 98-67, DA 03-2628 (rel. Aug. 11, 2003).

Safety Answering Point (“PSAP”).¹⁶ In the *IP Relay Order on Reconsideration*, the Commission granted IP Relay providers a waiver of this requirement until January 1, 2008.¹⁷ In so doing, the Commission recognized that emergency call handling is currently infeasible in an Internet environment.

In the *VRS Waiver Order*, VRS providers were granted a two-year waiver of emergency call handling requirements, with the understanding that VRS providers “make a clear and bold written statement on their website and any VRS promotional materials explaining the [VRS technology’s] shortcomings and potential dangers of using VRS to place an emergency call using 911.”¹⁸ This waiver will expire on December 21, 2003.

As the Commission has recognized, VRS and IP Relay services are similar in many ways, primarily because both of them use the Internet for one leg of the call.¹⁹ Using the Internet for one leg of the call, however, also means that VRS providers confront the same technological limitations as IP Relay providers. IP Relay providers and VRS providers alike are unable to determine the automatic number identification (“ANI”) or geographic location of the calling party, and therefore cannot automatically determine the appropriate PSAP. Hamilton therefore urges

¹⁶ See 68 Fed. Reg. 50,973 (rel. Aug. 25, 2003).

¹⁷ *Telecommunications Relay Services And Speech-To-Speech Services For Individuals With Hearing And Speech Disabilities*, Order on Reconsideration, CC Docket No. 98-67, FCC 03-46, 18 FCC Rcd 4761, para. 13 (rel. Mar. 14, 2003) (“*IP Relay Order on Reconsideration*”).

¹⁸ *VRS Waiver Order* para. 14. Hamilton fully complies with this requirement. The Hamilton VRS website and Hamilton’s promotional material contain the following statement, in bold: “911 CALLS - IF YOU HAVE AN EMERGENCY, YOU SHOULD USE YOUR TELEPHONE OR TTY TO CALL YOUR LOCAL EMERGENCY SERVICE NUMBER DIRECTLY.”

¹⁹ See *Telecommunications Relay Services And Speech-To-Speech Services For Individuals With Hearing And Speech Disabilities*, Declaratory Ruling, CC Docket No. 98-67, FCC 03-190, para. 2 n.9 (rel. Aug. 1, 2003).

the Commission to affirm that “ANI information is not available in Internet connections”²⁰ and extend the five-year waiver of emergency call handling to VRS providers.

B. Speed of Answer

Section 64.604(b)(2) requires adequate TRS staffing capable of answering 85% of all calls within 10 seconds, measured on a daily basis and taking into account abandoned calls. The waiver of this requirement as applied to VRS providers will expire on December 21, 2003.

VRS is a competitive market and providers have every incentive to ensure that customers are satisfied and that calls are answered quickly and competently. Nevertheless, because VRS is still in its infancy and remains a voluntary TRS offering, VRS providers have insufficient data with which to determine staffing needs to comply with speed of answer requirements. As the Commission noted in the *VRS Waiver Order*, “By allowing providers additional time to comply with the speed of answer requirements, [the Commission] will encourage more entrants into the VRS market and help provide more time for technology to develop.”²¹ The same rationale continues to apply. Flexibility with staffing requirements will help encourage market entry; VRS providers that do not provide prompt and efficient service will run the risk that customers will go elsewhere. Therefore, Hamilton

²⁰ *Telecommunications Relay Services And Speech-To-Speech Services For Individuals With Hearing And Speech Disabilities; Petition for Clarification of WorldCom, Inc.*, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 02-121, 17 FCC Rcd 7779, para. 30 (rel. Apr. 22, 2002) (“*IP Relay Declaratory Ruling*”).

²¹ *VRS Waiver Order* para. 16.

submits that an extension of the speed of answer waiver until January 1, 2008 is justified.

C. 900 Number Calls

Pay-per-call is a required TRS service pursuant to Section 64.604(c)(6) of the rules. In the *VRS Waiver Order*, the Commission granted VRS providers a waiver of 900 number call requirements because the provision of this service via VRS is technologically infeasible and the demand for 900 services via VRS is low.²² Those justifications continue to apply today. A continued waiver of this requirement would have minimal impact on VRS users at this time and would encourage VRS development by freeing providers to focus on innovative services that VRS users are demanding today.

Importantly, the Commission has already granted IP Relay providers a five-year waiver of 900 service requirements.²³ As noted above, the provision of IP Relay and VRS is similar in many ways. Like IP Relay providers, VRS providers do not have access to the calling party's ANI information, and therefore are unable to process 900 number calls. Accordingly, Hamilton submits that the same reasoning articulated in the *IP Relay Order on Reconsideration* applies to VRS, and the Commission should extend the pay-per-call waiver to VRS providers until January 1, 2008.

²² *Id.* paras. 19-20.

²³ *IP Relay Order on Reconsideration* para. 22.

III. Other Waivers Are Required in the Public Interest

A. Equal Access to Interexchange Carriers

Pursuant to Section 64.604(a)(3) of the Commission's rules, TRS providers are generally required to be capable of handling any type of call normally provided by common carriers, including operator calls and long distance calls. In addition, TRS users are required to have access to the long distance carrier of their choice.²⁴ In the *IP Relay Declaratory Ruling*, however, the Commission *permanently* waived the carrier of choice requirement for IP Relay.²⁵ In so doing, the Commission recognized the inherent difficulty in determining whether an IP Relay call is long distance or local. Furthermore, the Commission recognized that IP Relay providers provide long distances services to their customers free of charge, and therefore a carrier of choice requirement is unnecessary for IP Relay.

Hamilton submits that the same reasoning applies to VRS. VRS providers, similar to IP Relay providers, are unable to determine the jurisdictional nature of an incoming call because ANI information is unavailable from the Internet connection used to make a VRS call. VRS providers, like IP Relay providers, resolve this problem to the benefit of the user by waiving all long distance charges, thus eliminating the cost factor that ordinarily justifies the equal access requirement. In any event, as more interexchange carriers begin voluntary delivery of VRS, consumers should be able to use the interexchange carrier of their choice by using that carrier's VRS offering. Therefore, a *permanent* waiver for VRS providers of the equal access and types of call provisions is justified.

²⁴ 47 C.F.R. § 64.604(a)(3).

²⁵ *IP Relay Declaratory Ruling* para. 31.

B. STS Relay and Spanish Relay

Section 64.603 requires TRS providers to provide STS relay service and Spanish language relay services. These requirements were waived in the *STS/VRS Waiver Order* and will not apply to VRS providers until the Commission decides to reexamine its decision.²⁶ Hamilton interprets this decision as an indefinite waiver of the STS and Spanish relay requirements until the Commission decides to revisit this issue *sua sponte*. Therefore, Hamilton is not requesting a waiver extension for those requirements and merely seeks clarification that such an extension is unnecessary.

C. Call Release, Three-Way Calling, Speed Dialing, and Automatic Call Forwarding

In the *2003 TRS Order*, the Commission waived the requirement that VRS and IP Relay providers provide call release, three-way calling and speed dialing when such requirements become effective on September 24, 2003. The waiver of these requirements is contingent upon VRS providers and IP Relay providers filing an annual report. Consistent with the other waivers granted to IP Relay providers and VRS providers, these waivers will expire on January 1, 2008.²⁷ Therefore, it is unnecessary for Hamilton to request a waiver of those requirements here.

However, with respect to automatic call forwarding, the Commission stated that:

[W]e need not require [automatic call forwarding] as a mandatory minimum standard because this feature is one that the called party subscribes to through his or her local telephone company. When the called party has subscribed to call forwarding, any calls to that number

²⁶ *STS/VRS Waiver Order* paras. 26-27.

²⁷ *2003 TRS Order* para. 76.

– whether from a CA relaying a TRS call or from a person making a conventional voice call – will be automatically forwarded to the alternate number designated by the called party.²⁸

Hamilton agrees with the Commission's assessment in situations where a VRS user places a call to a voice user. In those situations, if the voice user has his or her telephone forwarded to another number, the video relay call will automatically forward to the new voice telephone number.

This is not the case, however, in situations where the called party is a VRS user. VRS providers cannot provide automatic call forwarding when a voice user calls a VRS user because IP addresses and log-ins (*i.e.*, the method by which VRS users receive calls) do not contain the ANI information necessary to permit call forwarding using the traditional telephone network. Therefore, to the extent that a waiver of this requirement is necessary, Hamilton requests a waiver until January 1, 2008, consistent with the other waivers granted to VRS providers.

D. Voice Initiated Calls, VCO and HCO

Finally, in the *IP Relay Order on Reconsideration*, the Commission waived the minimum requirements for IP Relay providers to provide voice initiated calls, including VCO, HCO and STS calls, until January 1, 2008.²⁹ Because the technological limitations that prevent IP Relay providers from providing such voice initiated calls also limit the ability of VRS providers to provide such calls, Hamilton submits that the five-year waiver of these types of calls should be extended to all VRS providers. Like IP Relay providers, VRS providers rely on the Internet for one leg of the call, and the current quality of a voice call over the Internet may be poor

²⁸ *Id.* para. 67.

²⁹ *IP Relay Order on Reconsideration* paras. 14, 18.

and is dependent on the quality of the user's customer premises equipment, which varies widely. Accordingly, a waiver of all voice-initiated call requirements, including VCO and HCO, should be extended to VRS providers consistent with the waiver granted to IP Relay providers.³⁰

IV. Annual Reporting Requirements

Hamilton continues to believe that mandating minimum requirements for the voluntary provision of VRS will deter, rather than encourage, the availability of services that allow TRS users with hearing or speech disabilities to communicate via sign language. Furthermore, a continuation of the waivers established in the *VRS Waiver Order* should spur more competitive offerings of VRS, foster development of demand for VRS and maintain flexibility for the marketplace to determine what VRS technology will become widely available for VRS. Affording more leeway to providers during this early phase of VRS development (just as the Commission did when traditional TRS was becoming established in the early 1990s) will help accomplish the Commission's stated goal of encouraging VRS deployment.

Nonetheless, as VRS services mature, certain patterns should emerge. To keep the Commission apprised of industry changes, and thus afford the Commission an opportunity to extend or curtail VRS waivers as necessary, Hamilton suggests that a grant of VRS waiver extensions should be contingent on the filing of an annual report by each VRS provider. For example, in the *2003 TRS Order*, the Commission adopted mandatory reporting requirements for VRS providers and IP

³⁰ As noted earlier, the Commission has already waived STS, two-way VCO, two-way HCO, VCO-to-TTY, HCO-to-TTY, VCO-to-VCO and HCO-to-HCO requirements for VRS providers.

Relay providers.³¹ Reporters must detail technological changes in the provision of VRS and IP Relay, progress made, and the steps taken to resolve technological problems that create the current need for waivers. Hamilton submits that these reporting requirements should be expanded to include the submission of information concerning the waiver extensions requested herein. A comprehensive report on the status of all VRS and IP Relay services for which waivers have been granted will provide the Commission with detailed information on these nascent TRS markets as they mature over the next several years. Provided with this information, the Commission will be in a far better position to determine whether the waivers continue to serve the public interest each year.

The *2003 TRS Order* requires VRS and IP Relay reports to be submitted on April 16 of each year. For purposes of administrative convenience, Hamilton suggests that, rather than establishing a separate annual report, the Commission should integrate the proposed reporting requirements into the April 16 annual report, thus establishing one comprehensive yearly report on the status of IP Relay and VRS services.

V. Conclusion

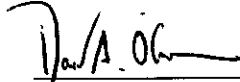
For good cause shown, and in order to fulfill the Commission's goal of encouraging VRS service and its obligation to foster technology, the Commission should: 1) extend, until January 1, 2008, the waivers granted to VRS providers in the *VRS Waiver Order*; 2) permanently waive the equal access requirement for VRS providers; 3) clarify that STS and Spanish Relay have been waived indefinitely; 4)

³¹ *2003 TRS Order* para. 36.

waive, to the extent necessary, the automatic call forwarding requirement; 5) waive, until January 1, 2008, all voice initiated call requirements (including VCO and HCO) for VRS providers; and 6) require VRS providers to submit annual reports regarding all waivers (other than permanent or indefinite waivers), consistent with the reporting requirements of IP Relay and VRS providers as set forth in the 2003 *TRS Order*. For administrative convenience, Hamilton suggests that the Commission formulate a comprehensive IP Relay/VRS report due annually on April 16.

Respectfully submitted,

HAMILTON RELAY, INC.

A handwritten signature in black ink, appearing to read "D.A. O'Connor", is written over a horizontal line.

David A. O'Connor
Holland & Knight LLP
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Washington, DC 20006
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September 15, 2003

CERTIFICATE OF SERVICE

I, Laura Ledet, an employee of Holland & Knight LLP, hereby certify that on September 15, 2003, a copy of the foregoing "Petition for Waiver Extension" was served to the following:

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